

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

|                                      |   |                        |
|--------------------------------------|---|------------------------|
| DARYL ARTHUR WITMER,                 | ) |                        |
|                                      | ) |                        |
| Plaintiff,                           | ) |                        |
|                                      | ) |                        |
| v.                                   | ) | Case No. CIV-08-1106-D |
|                                      | ) |                        |
| SHANE WYATT, Warden, <i>et al.</i> , | ) |                        |
|                                      | ) |                        |
| Defendants.                          | ) |                        |

**ORDER**

This matter is before the Court for review of the Report and Recommendation [Doc. No. 52], issued May 12, 2009, by United States Magistrate Judge Doyle W. Argo pursuant to 28 U.S.C. § 636(b)(1). Judge Argo recommends the dismissal of Defendant Susan Winchester, upon motions by both Defendant Winchester and Plaintiff, and the denial of Plaintiff's motion for leave to file an amended complaint. No objection has been timely filed, although the parties were expressly advised of their right to object and the manner for filing an objection.<sup>1</sup> Therefore, the Court finds the parties have waived further review of the issues addressed in the Report.

IT IS THEREFORE ORDERED the Report and Recommendation [Doc. No. 52] is ADOPTED in its entirety and the recommended rulings are issued as follows:

- Defendant Winchester's Motion to Dismiss [Doc. No. 45] is GRANTED;
- Plaintiff's Motion to Dismiss Defendant Winchester [Doc. No. 49] is DENIED as moot; and
- Plaintiff's Motion for Leave of Court to Amend Petition [Doc. No. 50] is DENIED, without prejudice to filing a subsequent motion to amend, if appropriate.

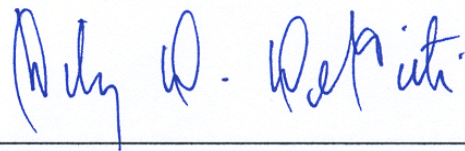
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<sup>1</sup> On May 26, 2009, certain defendants filed an objection to Plaintiff's motion to amend, urging that the motion be denied. This "objection" is thus consistent with Judge Argo's recommended ruling.

IT IS FURTHER ORDERED that the action against Defendant Susan Winchester is DISMISSED.

The case remains under referral to Judge Argo pursuant to 28 U.S.C. § 636(b)(1) for further proceedings.

IT IS SO ORDERED this 5<sup>th</sup> day of June, 2009.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE